

APPEAL NO. 021684
FILED AUGUST 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on June 10, 2002, the hearing officer determined that the respondent's (claimant) compensable low back injury of _____, extends to and includes a bulging disc at the L3-4 level and central disc herniations at the L4-5 and L5-S1 levels, and that he has had disability from February 13, 2002, through the date of the hearing. The appellant (carrier) appeals these determinations on evidentiary sufficiency grounds. The claimant's response urges the sufficiency of the evidence to warrant an affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he knelt down to pull a 10-foot scaffolding pipe from a pile of scaffolding materials and when he stood up with the pipe in hand, he felt low back pain; that after lunch he reported the pain to his foreman who took him to the safety manager; that the safety manager took him to a doctor's office but before being seen by the doctor, the safety manager took him away for a drug screen and an examination by the employer's nurse who viewed his range of motion, gave him some nonprescription medications, and told him to go back to work. The claimant further stated that the employer had him sit around in the safety manager's office for about one and one-half weeks, and then returned him to his scaffolding crew where he was given ground duties; that he worked until February 12, 2002, when he drove his daughter to a hospital in another city; that on February 13, 2002, he returned to that hospital to be seen for his low back injury; and that on February 14, 2002, his employment was terminated. The February 19, 2002, MRI report showed the disc bulge at L3-4 and the herniations at L4-5 and L5-S1. The claimant contended that his lumbar spine injury was more serious than the sprain the carrier accepted; that the employer had him see the company nurse instead of the doctor and told him he just had a pulled muscle; that the employer's managers repeatedly characterized the claimed injury as an "incident" and his complaints of "pain" as "discomfort" in order to avoid a "reportable injury," which would adversely affect the monthly injury-free bonuses. The carrier emphasized the points that the claimant continued to work without apparent difficulty until February 12, 2002, and was not seen by a doctor until February 13, 2002. The evidence reflected that the claimant's employment was terminated for absenteeism on February 14, 2002.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone.

Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge